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SPEECH

OF

WILLIAM H. SEWARD,

ON

THE PRESIDENT'S VETO

OF THE

LAND BILL FOR THE INSANE,

IN THE

SENATE OF THE UNITED STATES, JUNE 19, 1854.

WASHINGTON, D. C.
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SPEECH OF WILLIAM H. SEWARD.

Congress has passed a bill by which ten millions of acres of the public domain are granted to the several States, with unquestioned equality, on condition that they shall accept the same, and sell the lands at not less than one dollar per acre, and safely invest the gross proceeds, and forever apply the interest thereon to the maintenance of their indigent insane inhabitants. This bill is a contribution to the States, made from a peculiar national resource, at a time when the Treasury is overflowing. It is made at the suggestion, and it is not stating the case too strongly to say, through the unaided, unpaid, and purely disinterested influence of an American woman, [Miss Dix,] who, while all other members of society have been seeking how to advance their own fortunes and happiness, or the prosperity and greatness of their country, has consecrated her life to the relief of the most pitiable form in which the Divine Ruler afflicts our common humanity.

The purpose of the bill has commended it to our warmest and most active sympathies. Not a voice has censured it, in either House of Congress. It is the one only purpose of legislation, sufficiently great to arrest attention, that has met with universal approbation throughout the country, during the present session. It seems as if some sad fatality attends our public action, when this measure is singled out from among all others, to be baffled and defeated by an Executive veto. Such, however, is the fact. The bill has been returned by the President with objections which it is now our constitutional duty to consider.

I shall confine myself to the consideration of these objections alone, and shall not look backward to questions raised in previous discussions here, nor dwell upon any that have been raised since the veto message was received, which are not contained in that document. Five years of Congressional discussion have exhausted the subject, so far as all objections, except those of the President, are concerned.

In considering the President's message, we are struck with the fact that it is desultory, illogical, and confused. While commending the purpose of the bill, the President denies the expediency of the measure, and denies also the power of Congress to adopt it. It is impossible, however, to separate the argument directed against the expediency of the measure from the argument directed against the power. So the argument against the expediency rests chiefly on an assumption that the measure is a usurpation of power, while the argument against the power reposes chiefly on the in expediency of its exercise.

This criticism is important, because the confusion I have described impairs the force of the argument, and because, moreover, Congress may well confide in their own conclusions as to the expediency of a measure, while they are bound to pay extraordinary respect to Executive suggestions impugning its constitutionality. I do not stop to demonstrate the correctness of this criticism. Every Senator who has discussed the message, on either side, has betrayed, I think, an embarrassment resulting from it.

In the second place, the message seems to me, I do not say disingenuous, but singularly unfair and unjust in the statement of the question.

The bill confines itself to a single purpose, viz : that of aiding the States in enabling them to maintain one peculiar class of destitute persons, by an appropriation of equal and just parts of the public domain, leaving all other objects and all other sources of public wealth out of view, and abstaining altogether from interference with the States in the performance of even that one duty.

But the President is not content to state the question thus. He approaches it by an induction. "It cannot be questioned," he says, "that if Congress have power to make provision for the indigent insane without the limits of this District, it has the same power to provide for the indigent who are not insane, and thus to transfer to the Federal Government the charge of all the poor in all the States." After amplification of this proposition, without argument, the President arrives at the statement of the question before him, and announces it in these words :

"The question presented, therefore, clearly is upon the constitutionality and propriety of the Federal Government assuming to enter into a novel and vast field of legislation, namely, that of providing for the care and support of all those among the people of the United States who by any form of calamity become fit objects of public philanthropy."

You need only place this statement of the case by the side of the President's own statement of the provisions of the bill, to enable you to see that it is flagrantly erroneous and unjust. But I will illustrate it directly. Congress does, in unquestioned conformity with the Constitution, exercise some powers in the States which are concurrent with similar powers enjoyed by the States themselves. Thus Congress establishes here and there, throughout the States, hospitals for sick and disabled seamen. Is that equivalent to assuming the support and care of all the poor, on land as well as on sea, belonging to the States ?

Congress establishes light-houses and constructs harbors of refuge within the States, and provides regulation for the construction and management of steamboats and ships on navigable waters within the States. Is that equivalent to usurpation of the entire control over commerce and navigation within the States? Congress distributes seeds and treatises on agriculture. Is that equivalent to usurpation of jurisdiction over agriculture throughout the States? Congress discriminates by bounties, drawbaeks, and duties, so as to favor agriculture, the fisheries, and manufactures. Is that equivalent to assumption of supreme and exclusive power over all those great national interests? Congress prescribes regulations of the militia, and furnishes to the States arms, ammunition, and ordnance, for the equipment and exercise of the militia. Is that equivalent to usurpation of the entire support, control, and direction of the armed police of the States?

I call your attention, next, sir, to the fact that this message presents unfairly the relative structures and characters of the Federal Union and of the States. The President says: "Are we not too prone to forget that the Federal Union is the creature of the States, and not they of the Federal Union?" And again he says that "the independent and sovereign States united themselves for certain specified objects and purposes, and for those only;" thereby implying that the States are still entirely sovereign, while the Federal Government is a mere Confederation, and not equally sovereign within its sphere. Now, no one ever thought that the States were creatures of the Federal Union; but it is equally true, in my judgment, that the Federal Union is not the creature of the States. Both are States connected with and yet independent of each other. Each of them was established directly by the people—the several State Governments by the people of the States, respectively, and the Federal Union by the people of all the States. Each is shorn of some attributes of sovereignty, and each is supreme within its sphere.

Once more: the message is unfair in drawing into the discussion and discussing a question whether a power to pass the bill can be derived from the eighth section of the Constitution, which gives Congress the authority "to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and welfare of the United States." No member of Congress has advocated that principle, since this bill was inaugurated, half a dozen years ago. The principle is obsolete, if it ever had advocates. No statesman has advocated it, in or out of Congress, for a period of forty years. While, therefore, the President's expositions of that subject may serve to raise prejudices against the bill, it is quite certain that they are altogether foreign from a consideration of its merits.

If it shall seem to you, Mr. President, that the criticisms I have offered might have been spared, I hope it will be a sufficient defence to say that those criticisms dispose of two-thirds of the entire message of the President, and leave only two of three points in the whole case to be examined. In the manner I have described, the President reaches

at last the principal question, viz: whether Congress has power to pass this bill by virtue of the third section of the fourth article of the Constitution, which is as follows:

"The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State."

The President denies that this section contains the power claimed by Congress. Now, it is apparent, first, that the land appropriated by the bill is a part of "the territory or other property of the United States;" and, secondly, that the term "to dispose of" includes any way and every way by which Congress can divest the United States of those lands, whether by sales to States or individuals, or by gifts to States or individuals.

The bill apportions and bestows the lands among and upon the States, and is therefore constitutional, unless it can be shown that the absolute power contained in that section is limited by some other provision of the Constitution, which inhibits the proposed disposal of them. The President says that there is such an inhibition, and he finds it in the last clause of the section collated with the 6th article, which is as follows, to wit: "All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States as under the Confederation." The President brings into this connection also a provision contained in the deed by which Virginia ceded her share of the public domain of the United States, to wit: "All the lands within the Territory so ceded to the United States, and not reserved for, or appropriated to, any of the before-mentioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered a common fund for the use and benefit of such of the United States as have become or shall become members of the Confederation or Federal Alliance of the said States, Virginia included, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other purpose whatever." The President adds: "Here the object for which these lands are to be disposed of is clearly set forth." And he adds, that "the provisions recited not only contain no implication in favor of the contemplated grant, but furnish the strongest authority against it."

I proceed to examine this argument, and remark, first, that the words quoted from the 3d section of the 4th article of the Constitution, viz: "And nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State," have no application here.

We know historically, and from the commentators in the *Federalist*, that there was, at the time of the adoption of the Constitution, much uncertainty about the boundary lines between the States, and of course about their respective titles

to, or interest in, the unoccupied domain which was ceded by the several States to the United States, and also that all of the States interested in the said domain had not executed deeds of cession at the time the Constitution was framed by the Convention; and we know, from the same evidence, that the clause relied upon by the President was designed merely to save any rights or titles which had not been and should not be ceded to the United States, and also at the same time to save just claims which the United States had, by or independent of such deeds of cession. Now, it is absurd to say that the bill before us prejudices any claim of the United States; for it assumes that the property disposed of is exclusively the property of the United States. It is equally absurd to say that it prejudices the claim of any particular State; for no State has laid any claim, or can lay any claim, to the lands in question. This disposes of the supposed limitation in the 3d section of the 4th article.

The 6th article manifestly has no relation to the public domain. It is in these words: "All 'debts' contracted and engagements entered into 'before the adoption of this Constitution, shall 'be as valid against the United States under this 'Constitution as under the Confederation.'" It is satisfied by applying it to the then existing public debt, and to then existing treaties. We learn from the *Federalist* that it was so understood by the framers of the Constitution.

Mr. Madison recites it in the 43d number of the *Federalist*, with this remark: "This can only be 'considered as a declaratory proposition, and may 'have been inserted, among other reasons, for the 'satisfaction of the foreign creditors of the United 'States, who cannot be strangers to the pretend- 'ed doctrine, that a change in the political form 'of society has the magical effect of dissolving 'its moral obligations."

There is, then, no limitation or qualification of the absolute power of Congress to dispose of the domain, contained in the Constitution itself. Nor does the provision contained in the deed of cession from Virginia affect it.

Let us now concede that the constitutional power to dispose of the public domain is affected, and even controlled, by the deed of cession from Virginia. There is nothing in the bill which conflicts with that provision. The provision is only this: that the lands ceded by Virginia shall be considered a *common fund*, for the use and benefit of all the States, and be faithfully and *bona fide* disposed of for that purpose. The bill under consideration does *consider* the ten millions of acres a common fund, for the use and benefit of all the States, and does faithfully and *bona fide* dispose of it for their common and equal use and benefit.

But the President argues that the public domain, or the proceeds resulting from sales of it, and not expended, cannot be apportioned among the States, but must remain a common fund, which, as it has been pledged heretofore, and is now pledged, so hereafter it may again be pledged for public debts. But this argument proves too much. It would invalidate all grants of bounty lands, in consideration of past services in the

army and navy of the United States. And it would equally invalidate all grants for the construction of canals and railroads, neither of which modes of disposing of the public lands has the President condemned.

The President seeks to extricate himself from this dilemma by raising a theory which has no foundation in the Constitution, or in any contemporaneous exposition of it, and justifies the grants which have been made for the construction of railroads and canals upon the principle that the United States, being a land-holder within the States, may lawfully give away one portion of its lands, without consideration, for the purpose of thereby enhancing the value of what remains. But it is apparent that the constitutionality of a grant is thus made to depend upon the fact that the value of the land given away is not more than the increase of the value of what remains; and so that Government must necessarily raise the price of the lands retained to the utmost of their increased value. Such a course is never pursued. The Government which should pursue it might act as a prudent landholder, but would, at the same time, act as an oppressive and tyrannical ruler. This theory, that the Government must act as a prudent landholder, seems to me altogether fanciful. It is not capable of universal application at all places and under all circumstances. A prudent landholder might give away one-fourth of his land, in some places, to enhance the value of the rest; and at other times half, and at other times three-fourths, but not everywhere and always the same proportion.

But there is another consideration which is fatal to the theory.

The policy which a prudent landholder might pursue, merely as a landholder, to increase the value of his estate, might be altogether inconsistent with the policy which a great, rich, and beneficent Government ought to pursue to increase the wealth, the greatness, and the strength of a Nation. Many a prudent proprietor has changed his allegiance to save his domain; and many a brave people have sacrificed their domain to save their liberties. The United States are not not a mere land-owner. They are a State, a political State. They are indeed a land-owner, and they ought to be a prudent one. But land-ownership is the lowest of their functions, and land speculation ought to be the last which they should assume.

Without tracing further this new and idle theory of prudent proprietorship, it may be dismissed with two remarks. First, that it rests altogether upon the restraining provision contained in the deed of cession from Virginia, which applied only to the original domain of the United States, and not to those portions since acquired; secondly, that the ten millions of acres apportioned by this bill are virtually to be selected in regions subsequently acquired and entirely distinct from that original domain.

The President's next objection is, that there is an act of January 28, 1847, which pledges the sales of the public lands for the payment of the debt contracted in the Mexican war. I reply, first, that that debt is virtually paid, inasmuch as we have a surplus revenue, constantly accumu-

ting, and are buying up the stock in advance of its maturity, at enormous premiums, and the creditor who complains of this bill may at once receive payment in full. Secondly, that pledge was never understood to prohibit judicious appropriations of the public domain; and the objection, if good against this bill, annuls all the laws by which we have given homesteads to the survivors of all our wars, as well as those by means of which we have procured capitalists to cover with a net-work of railroads the broad region which stretches away from the base of the Alleghany mountains to the river Mississippi.

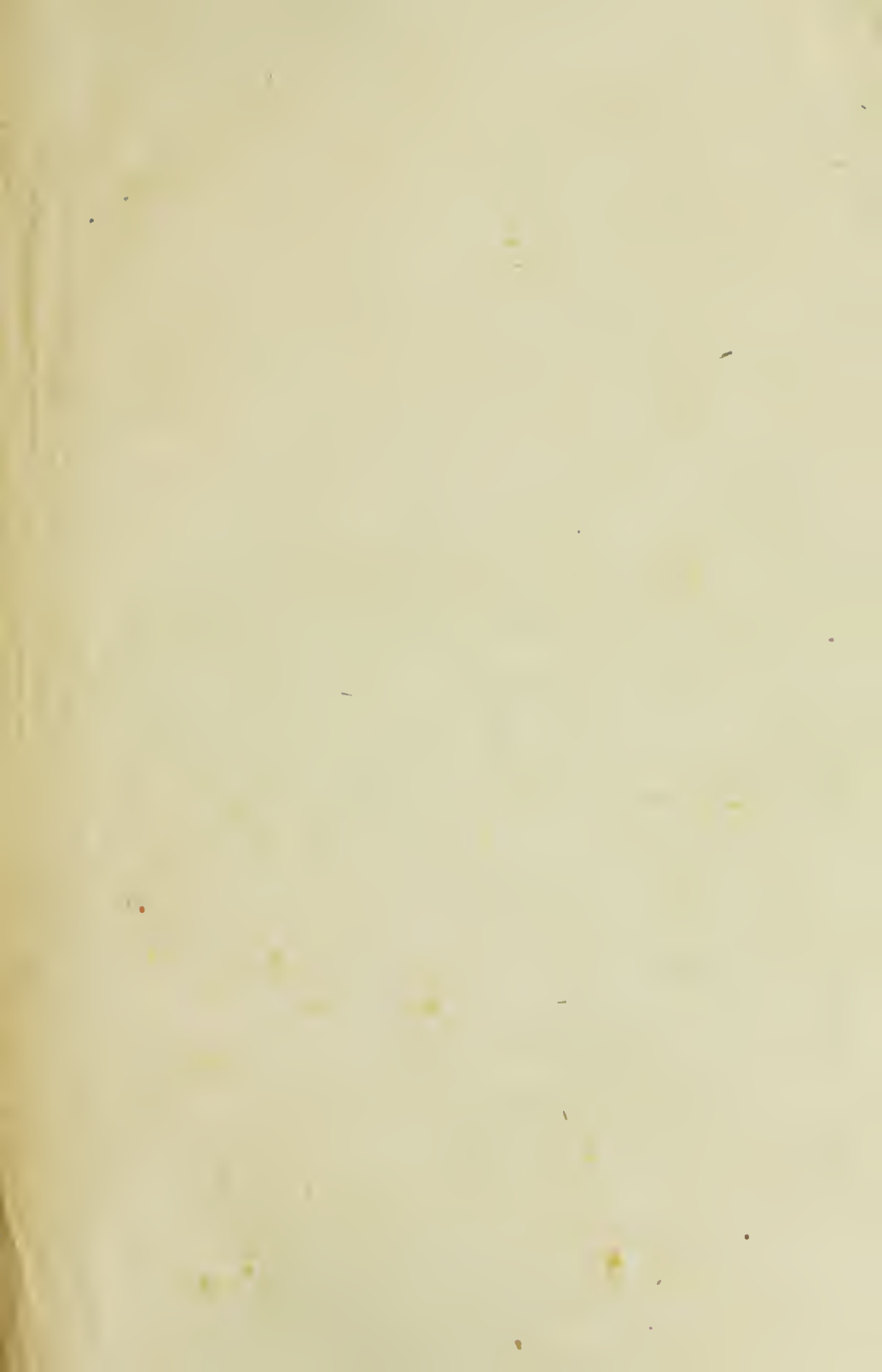
The President expresses deep concern lest this contribution by the Federal Government to the States should impair their vigor and independence. But it is not easy to see how a contribution which they are at liberty to reject, and which they are to apply to a necessary and to a proper purpose of Government, in entire independence of the Federal Government, can wound their self-respect, or deprive them of any of their attributes of sovereignty.

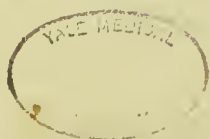
The President is, moreover, deeply disturbed by an apprehension, that if the policy of this bill should be pursued, its noble purposes would be defeated, and the fountains of charity within the States would be dried up. The President must not needlessly afflict himself in this wise, on the score of humanity. Experience is against his fears. Congress has never manifested a disposition of profuse liberality towards the States. Every community that has received from the Federal territory or property military bounties or pensions is at least as brave and patriotic as it was before. Every community that has received from the same sources contributions for the purposes of internal improvement is more enterprising than before. Every community that has received aid for its schools of learning has been rendered more zealous and more munificent in the cause of education.

Thus, sir, I have reviewed the President's objections. In conclusion, it remains for me to express the opinion, that, as in the early days of the Republic, there was a school of latitudinarian construction of the Constitution, which school was quite erroneous, so, also, there was a

school whose maxim was strict construction of the Constitution, and this school has accumulated precedents and traditions equally calculated to extinguish the spirit of the Constitution. Circumstances have altogether changed since that school was founded. The States were then rich and strong; the Union, was poor and powerless. Virginia lent to the United States a hundred thousand dollars to build their Capitol. But the States could not enlarge themselves. They possessed respectively either no public lands at all, or very small domains, and to such domains they have added nothing by purchase or conquest. Charged with all the expenses of municipal administration, including the relief of the indigent, the cure of the diseased, the education of the people, and the removal of natural obstructions to trade and intercourse, they reserved, nevertheless, only the power to raise revenues by direct taxation, one which always was and always will be regarded with jealousy and dislike, and is therefore never one that can be freely exercised.

The Union, on the contrary, by conquest and purchase, has quadrupled its domain, and is in possession of superabundant revenues, derived from that domain and from imposts upon foreign commerce, while it also enjoys the power of direct taxation. Contrast the meager salaries of the officers of the States with the liberal ones enjoyed by the agents of the Union. Contrast the ancient narrow and cheerless Capitols of Annapolis, Harrisburg, and Albany, with this magnificent edifice, amplifying itself to the north and the south, while it is surrounded by gardens traversed by spacious avenues and embellished with fountains and statuary, and you see at once that the order of things has been reversed, and that it tends now not merely to concentration, but to consolidation. I know not how others may be affected by this tendency, but I confess that it moves me to do all that I can, by a fair construction of the Constitution, not to abate the Federal strength, and diminish the majesty of the Union, but to invigorate and aggrandize the States, and to enable them to maintain their just equilibrium in our grand but exquisitely contrived political system.







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